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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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SCOTT JOHNSON,  
Plaintiff,

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v.

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EXPRESS AUTO CLINIC, INC.,  
Defendants.

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Case No. 18-cv-00464-KAW

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
DEFAULT JUDGMENT**

Re: Dkt. No. 55

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Plaintiff Scott Johnson filed the instant suit against Defendants Express Auto Clinic, Inc., Abdulsaeer Alsumairi, and Waled Aydeh, asserting violations of the Americans with Disabilities Act (“ADA”) and Unruh Civil Rights Act. (Compl., Dkt. No. 1.) On April 5, 2019, Plaintiff filed a motion for default judgment as to Defendants Express Auto Clinic, Inc. and Aydeh (collectively, “Defendants”).<sup>1</sup> (Plf.’s Mot. for Default Judgment, Dkt. No. 55.) The Court held a hearing on June 6, 2019, at which Defendants failed to appear. (Dkt. No. 65.) On June 13, 2019, Plaintiff filed a supplemental brief regarding attorney’s fees. (Dkt. No. 66.)

Having considered the filings and the relevant legal authority, the Court GRANTS IN PART AND DENIES IN PART Plaintiff’s motion for default judgment.

**I. BACKGROUND**

Plaintiff is a C-5 quadriplegic who cannot walk and uses a wheelchair for mobility. (Compl. ¶ 1; Johnson Decl. ¶ 2, Dkt. No. 55-4.) Plaintiff has a disabled persons parking placard issued by the State of California, and drives a specially equipped and modified van that deploys a

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<sup>1</sup> Plaintiff previously filed a notice of settlement as to Defendant Alsumairi. (Dkt. No. 52.) At the hearing, Plaintiff clarified that they did not seek attorney’s fees attributable to work performed as to Defendant Alsumairi only, such that there would be no double recovery.

1 ramp so that he can wheel in and out of his vehicle. (Compl. ¶ 1; Johnson Decl. ¶ 3.) Because  
2 Plaintiff uses a ramp and needs to transition from his van to the parking access aisle, Plaintiff  
3 requires a properly configured van accessible parking space with a level access aisle. (Johnson  
4 Decl. ¶ 4.)

5 In May 2017, July 2017, October 2017, and December 2017, Plaintiff visited the Valero  
6 Gas Station at 3810 Broadway, Oakland, California to buy gas and snacks. (Compl. ¶ 16; Johnson  
7 Decl. ¶ 5.) The real property is owned by Defendant Express Auto Clinic, Inc., and Defendants  
8 Alsumairi and Ayedh own the Valero gas station. (Compl. ¶¶ 2-11.)

9 Although there was a parking space reserved for persons with disabilities, Plaintiff asserts  
10 that the parking space did not comply with the Americans with Disabilities Act Accessibility  
11 Guidelines (“ADAAG”) during his visits. (Compl. ¶ 19; Johnson Decl. ¶ 6.) Specifically, there  
12 was no “No Parking” warning in the adjacent access aisle. (Compl. ¶ 20.) Additionally, the  
13 access aisle was not painted blue. (Johnson Decl. ¶ 6.) Each time Plaintiff visited, there were cars  
14 parked in the access aisle or in the parking space that did not have handicap placards. (Johnson  
15 Decl. ¶ 6.)

16 Inside the gas station, the path of travel in and throughout the merchandise aisles was not  
17 accessible because Defendants would place merchandise and merchandise display on the route of  
18 travel, narrowing the route of travel to less than 36 inches. (Compl. ¶ 27.) As a result, Plaintiff  
19 was unable to fit his wheelchair down the merchandise aisles. (Compl. ¶ 33; Johnson Decl. ¶ 7.)  
20 Additionally, the transaction counter was 38 inches high, with no portion lowered to 36 inches.  
21 (Compl. ¶¶ 29-32.)

22 On January 9, 2018, an investigator went to the Valero gas station, and found that there  
23 was no “No Parking” warning in the access aisle next to the handicapped parking space. (Louis  
24 Decl. ¶¶ 2-3, Dkt. No. 55-5.) The investigator also found that inside the Valero gas station, the  
25 path of travel was as narrow as 31 inches, and that the transaction counter was 38 inches high.  
26 (Louis Decl. ¶¶ 4-5.)

27 On January 21, 2018, Plaintiff filed the operative complaint, asserting violations of the  
28 ADA and Unruh Civil Rights Act. (*See* Compl.) On February 11, 2018, Defendant Express Auto

1 Clinic, Inc. was served by substitute service. Specifically, on January 25, 2018, the summons and  
2 complaint were left by a registered process server with Defendant Express Auto Clinic, Inc.’s  
3 agent of service by leaving the papers with the manager. (Dkt. No. 9 at 1.) The summons and  
4 complaint were then mailed on February 1, 2019.<sup>2</sup> (*Id.* at 3.) On February 16, 2018, Defendant  
5 Ayedh was served by substitute service after two prior unsuccessful attempts. Specifically, on  
6 February 1, 2019, the summons and complaint were left by a registered process server with a  
7 cashier at Defendant Ayedh’s usual place of business. (Dkt. No. 10 at 1.) The summons and  
8 complaint were then mailed on February 6, 2018. *Id.* at 4.)

9 Defendant Express Auto Clinic, Inc.’s answer was due on March 5, 2018, and Defendant  
10 Ayedh’s answer was due on March 9, 2018. On March 7, 2018, Plaintiff moved for entry of  
11 default as to Defendant Express Auto Clinic, Inc. (Dkt. No. 14.) On March 9, 2018, the Clerk of  
12 the Court entered default against Defendant Express Auto Clinic, Inc. (Dkt. No. 16.) On March  
13 12, 2018, Plaintiff moved for entry of default as to Defendant Ayedh. (Dkt. No. 17.) On March  
14 16, 2018, the Clerk of the Court entered default against Defendant Ayedh. (Dkt. No. 18.) On  
15 October 3, 2018, counsel filed consents to magistrate judge jurisdiction on behalf of Defendants  
16 Express Auto Clinic, Inc. and Ayedh. (Dkt. No. 38 (“CONSENT/DECLINATION to Proceed  
17 Before a US Magistrate Judge by Abdulnasser Alsumairi, Waled Ayedh, Express Auto Clinic,  
18 Inc.”).) Defendants Express Auto Clinic, Inc. and Ayedh, however, never moved to set aside entry  
19 of default.

20 On April 5, 2019, Plaintiff filed a motion for default judgment against Defendants, seeking  
21 \$4,000 in statutory damages and \$6,708 in attorney’s fees and costs. That same day, Plaintiff  
22 mailed the motion to Defendants. (Dkt. No. 58 at 2.) Counsel for Defendants also received notice  
23 of the filing through the Court’s electronic filing system. As of the date of this order, Defendants  
24 have not responded.

25 **II. LEGAL STANDARD**

26 Federal Rule of Civil Procedure 55(b)(2) permits a court to enter a final judgment in a case

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28 <sup>2</sup> Service of the summons and complaint by substitute service is deemed complete on the tenth day  
after mailing. (Cal. Civ. Proc. Code § 415.20(a).)

1 following a defendant's default. *Shanghai Automation Instrument Co. v. Kuei*, 194 F. Supp. 2d  
2 995, 999 (N.D. Cal. 2001). Whether to enter a judgment lies within the court's discretion. *Id.*  
3 (citing *Draper v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986)).

4 Before assessing the merits of a default judgment, a court must confirm that it has subject  
5 matter jurisdiction over the case and personal jurisdiction over the parties, as well as ensure the  
6 adequacy of service on the defendant. *See In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). If the  
7 court finds these elements satisfied, it turns to the following factors ("the Eitel factors") to  
8 determine whether it should grant a default judgment:

9 (1) the possibility of prejudice to the plaintiff, (2) the merits of  
10 plaintiff's substantive claim, (3) the sufficiency of the complaint, (4)  
11 the sum of money at stake in the action[,] (5) the possibility of a  
12 dispute concerning material facts[,] (6) whether the default was due  
13 to excusable neglect, and (7) the strong policy underlying the  
14 Federal Rules of Civil Procedure favoring decision on the merits.

15 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (citation omitted). Upon entry of default,  
16 all factual allegations within the complaint are accepted as true, except those allegations relating to  
17 the amount of damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).  
18 Where a default judgment is granted, the scope of relief "must not differ in kind from, or exceed in  
19 amount, what is demanded in the pleadings." Fed. R. Civ. 54(c).

### III. DISCUSSION

#### A. Jurisdictional Requirements

20 In considering whether to enter default judgment, a district court must first determine  
21 whether it has jurisdiction over the subject matter and the parties to the case. *In re Tuli*, 172 F.3d  
22 at 712 ("When entry of judgment is sought against a party who has failed to plead or otherwise  
23 defend, a district court has an affirmative duty to look into its jurisdiction over both the subject  
24 matter and the parties"). In his complaint, Plaintiff alleges a violation of a federal statute, the  
25 ADA, 42 U.S.C. § 12101 *et seq.* The Court thus has subject matter jurisdiction over this action  
26 pursuant to 28 U.S.C. § 1331(a).

27 The Court has personal jurisdiction over Defendant Express Auto Clinic, Inc. as it is a  
28 California corporation. (See Compl. at 1; Mot. for Default Judgment, Exh. 5 at 3, Dkt. No. 55-7.)

1 The Court also has personal jurisdiction over Defendant Ayedh, who resides in Daly City,  
2 California, and owns and operates a California business located in Oakland, California. (Mot. for  
3 Default Judgment, Exh. 5 at 14; Compl. ¶¶ 7-11; Dkt. No. 10.) Venue is also proper because the  
4 real property where the violation occurred is located in this district. (Compl. ¶¶ 2, 16.)

5 Finally, service of process was proper. The case was filed on January 21, 2018, and  
6 Defendants Express Auto Clinic and Ayedh were served by substitute service. (Dkt. Nos. 9-10.)  
7 The proof of service of the complaint and summons were filed on February 13 and February 18,  
8 2018. (*Id.*) Defendant Express Auto Clinic's default was entered on March 9, 2018, and  
9 Defendant Ayedh's default was entered on March 16, 2018. (Dkt. Nos. 16, 18.)

10 **B. Application to the Case at Bar**

11 An analysis of the *Eitel* factors establishes that a default judgment is appropriate in this  
12 case.

13 **i. *Eitel* Factor 1: Possibility of Prejudice to Plaintiff**

14 If Plaintiff is not granted relief in this case, he will likely be left without other recourse.  
15 Such potential prejudice to Plaintiff militates in favor of granting a default judgment. *See*  
16 *PepsiCo., Inc. v. Cal. Sec. Cans.*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

17 **ii. *Eitel* Factors 2 and 3: Meritorious Claim Alleged in Complaint**

18 Plaintiff brings claims under the ADA and Unruh Civil Rights Act.

19 **a. ADA**

20 Per Title III of the ADA, “[n]o individual shall be discriminated against on the basis of a  
21 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages,  
22 or accommodations of any place of public accommodation by any person who owns, leases (or  
23 leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a). To succeed on  
24 an ADA claim, the plaintiff must demonstrate that: “(1) she is disabled within the meaning of the  
25 ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public  
26 accommodations; and (3) the plaintiff was denied public accommodations by the defendant  
27 because of her disability.” *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007).

28 As to this third element, “[t]he concept of ‘discrimination’ under the ADA does not extend

1 only to obviously exclusionary conduct . . . Rather, the ADA proscribes more subtle forms of  
2 discrimination--such as difficult-to-navigate restrooms and hard-to-open doors--that interfere with  
3 disabled individuals' 'full and equal enjoyment' or places of public accommodation." *Chapman v.*  
4 *Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 945 (9th Cir. 2011). Thus, "[d]iscrimination includes a  
5 failure to remove architectural barriers in existing facilities where such removal is readily  
6 achievable. *Molski*, 481 F.3d at 730. In particular, the ADAAG "lay out the technical structure  
7 requirement of places of public accommodations," providing objective standards for architectural  
8 features. *Fortune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1080-81 (9th Cir. 2004).

9 The Court finds that Plaintiff has established an ADA violation. First, Plaintiff is disabled,  
10 as he is a level C-5 quadriplegic who cannot walk and has significant manual dexterity  
11 impairments. (Compl. ¶ 1.) Plaintiff uses a wheelchair for mobility and has a specially equipped  
12 van. (Compl. ¶ 1.)

13 Second, Defendants are private entities that operate a place of public accommodation, the  
14 Valero gas station. (Compl. ¶¶ 2-11.) A gas station is identified as a place of public  
15 accommodation and subject to Title III of the ADA. 42 U.S.C. §12181(7)(F).

16 Finally, Plaintiff was denied public accommodations by Defendants because of his  
17 disability. When Plaintiff visited in May, July, October, and December 2017, there were no van  
18 accessible parking spots for Plaintiff to use that complied with the 2010 ADAAG. (Compl. ¶¶ 16,  
19 19-24.) The 2010 ADAAG requires that a vehicle space must have an adjacent access aisle, which  
20 in turn must be marked so as to discourage parking in them. (2010 ADAAG §§ 502.2, 503.3.3.)  
21 Per the ADAAG, "[t]he method and color of marking are not specified by these requirements but  
22 may be addressed by State or local laws or regulations. Because these requirements permit the  
23 van access aisle to be as wide as a parking space, it is important that the aisle be clearly marked."  
24 (2010 ADAAG Advisory 502.3.3.) Here, although the access aisle had hatch marks, there was no  
25 other indication that parking was not permitted. (Compl. ¶¶ 20-23; Johnson Decl. ¶ 6.) Indeed,  
26 during Plaintiff's visits, there were vehicles without handicap placards parked in the access aisle,  
27 as well as when the investigator visited the station. (Compl. ¶¶ 20-21; Mot. for Default Judgment,  
28 Exh. 4 at 1, Dkt. No. 55-6 (picture of vehicle parked in the access aisle).) Thus, the access aisles

were not generally marked so as to discourage parking.

Additionally, the 2010 ADAAG requires that the clear width of walking surfaces shall generally be 36 inches minimum. (2010 ADAAG § 403.5.1.) Under specific circumstances, the clear width may be reduced to 32 inches. Here, the path of travel was narrowed to as little as 31 inches, which violates the 2010 ADAAG. (Compl. ¶ 27.) Plaintiff personally encountered this barrier during his 2017 visits. (Compl. ¶¶ 33, 35.)

Finally, the 2010 ADAAG requires that a business must provide a portion of a service counter that is 36 inches long and 36 inches high. (2010 ADAAG § 904.4.1.) Here, the service counter is 38 inches high, with no lowered portion. (Compl. ¶ 29.) Plaintiff personally encountered this barrier during his 2017 visits. (Compl. ¶¶33, 35.)

Accordingly, the Court finds that Plaintiff has sufficiently alleged an ADA claim as to the access aisle, the path of travel, and the service counter, and that Plaintiff personally encountered these barriers during his visits in 2017.<sup>3</sup>

b. Unruh Civil Rights Act

“Any violation of the ADA necessarily constitutes a violation of the Unruh Act.” *Molski*, 481 F.3d at 731. Therefore, the Court finds that Plaintiff has sufficiently alleged an Unruh Act claim.

Accordingly, the second and third *Eitel* factors favor granting default judgment as to the barriers identified in the complaint.

### iii. *Eitel Factor 4: The Sum of Money at Stake*

Under the fourth factor cited in *Eitel*, “the court must consider the amount of money at stake in relation to the seriousness of defendant’s conduct.” *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177; *see also Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 500 (C.D. Cal. 2003). “When the amount at stake is substantial or unreasonable in light of the allegations in the

<sup>3</sup> Whether or not the removal of the barrier is “readily achievable” is an affirmative defense that is waived unless raised. *See Wilson v. Haria & Gogri Corp.*, 479 F. Supp. 2d 1127, 1133 (E.D. Cal. 2007) (“while defendant would ordinarily be entitled to prove that the removal of the alleged architectural barriers is not ‘readily achievable’ . . . the court holds that this is an affirmative defense, which defendant has waived.”).

1 complaint, default judgment is disfavored.” *Frelich v. Roc Asset Solutions, LLC*, Case No. 16-cv-  
2 653-MEJ, 2016 WL 3748723, at \*6 (N.D. Cal. June 8, 2016) (citing *Eitel*, 782 F.2d at 1472).  
3 “However, when the sum of money at stake is tailored to the specific misconduct of the defendant,  
4 default judgment may be appropriate.” *Yelp Inc. v. Catron*, 70 F. Supp. 3d 1082, 1100 (N.D. Cal.  
5 2014).

6 Here, Plaintiff seeks \$4,000 in statutory damages and \$6,708 in attorney’s fees and costs.  
7 (Plf.’s Mot. for Default Judgment at 2.) Because this amount is not substantial, and the statutory  
8 damages are tied to Defendants’ misconduct, this factor weighs in favor of default judgment. *See*  
9 *Love v. Griffin*, Case No. 18-cv-976-JSC, 2018 U.S. Dist. LEXIS 158355, at \*12-13 (N.D. Cal.  
10 Aug. 20, 2018) (finding that this factor weighed in favor of default judgment where the plaintiff  
11 sought \$9,195.00 in statutory damages under the Unruh Act and attorney’s fees and costs).

12 **iv. *Eitel* Factor 5: Low Possibility of Dispute Concerning Material Facts**

13 The facts of this case are relatively straightforward, and Plaintiff has provided the Court  
14 with well-pleaded allegations supporting its claims. Moreover, because Defendants have not  
15 appeared in this lawsuit, the Court has no way to know if any of the facts alleged in the complaint  
16 would be disputed if this matter were litigated on the merits. This factor thus does not weigh  
17 against entry of a default judgment. *See, e.g., Elektra Entm’t Grp. Inc. v. Crawford*, 266 F.R.D.  
18 388, 393 (C.D. Cal. 2005) (“Because all allegations in a well-pleaded complaint are taken as true  
19 after the court clerk enters default judgment, there is only a remote possibility that any genuine  
20 issue of material fact exists.”); *accord Philip Morris USA, Inc.*, 219 F.R.D. at 500; *PepsiCo, Inc.*,  
21 238 F. Supp. 2d at 1177.

22 **v. *Eitel* Factor 6: Excusable Neglect**

23 The Court finds that there is no evidence of excusable neglect. Plaintiff served Defendants  
24 with the summons and complaint. (Dkt. Nos. 9-10.) Plaintiff also served Defendants by mail with  
25 notice of the instant motion for default judgment, and Defendants’ counsel would have received  
26 electronic notice of the motion as well. (See Dkt. No. 58.) Despite ample notice of this lawsuit  
27 and Plaintiff’s intention to seek default judgment, Defendants have failed to appear in this action.  
28 Thus, the record supports a conclusion that Defendants have chosen not to defend this action, and

1 not that the default resulted from excusable neglect. Accordingly, this *Eitel* factor favors the entry  
2 of a default judgment.

3 **vi. *Eitel* Factor 7: Strong Policy Favoring Decisions on the Merits**

4 Defendants were given an opportunity to have this dispute decided on the merits, but did  
5 not respond to the Complaint. Defendants' failure to respond makes a decision on the merits  
6 impractical. The policy underlying the Federal Rules of Civil Procedure favoring a decision on  
7 the merits is outweighed by the other *Eitel* factors.

8 **vii. Conclusion**

9 The Court concludes that the *Eitel* factors favor the entry of default judgment.  
10 Accordingly, the Court GRANTS Plaintiffs' motion for default judgment.

11 **IV. RELIEF SOUGHT**

12 **A. Injunctive Relief**

13 Plaintiff requests an injunction to remove the unlawful barriers. (Plf.'s Mot. for Default  
14 Judgment at 2.) Injunctive relief is available under both the ADA and the Unruh Act. *See Love*,  
15 2018 U.S. Dist. LEXIS 158355, at \*15. For violations of the ADA's accessibility provisions,  
16 "injunctive relief shall include an order to alter facilities to make such facilities readily accessible  
17 to and usable by individuals with disabilities." 42 U.S.C. § 12188(a)(2). Moreover, a plaintiff  
18 need not satisfy "[t]he standard requirements for equitable relief . . . when an injunction is sought  
19 to prevent the violation of a federal statute [that] specifically provides for injunctive relief."  
20 *Moeller v. Taco Bell*, 816 F. Supp. 2d 831, 859 (N.D. Cal. 2011) (internal quotations and citation  
21 omitted). Thus, a plaintiff need only demonstrate that "certain barriers at [d]efendant's  
22 establishment violated the ADA and that removal of th[ose] barriers was 'readily achievable'" in  
23 order to obtain an injunction. *Moreno v. La Curacao*, 463 Fed. Appx. 669, 670 (9th Cir. 2011)  
24 (quoting 42 U.S.C. § 12182(b)(2)(A)(iv)).

25 Here, the barriers do not appear to have been remedied yet. (See Compl. ¶¶ 21, 27, 32.)  
26 Accordingly, the Court GRANTS Plaintiff's request for injunctive relief as to providing: (1)  
27 compliant accessible parking spaces, (2) accessible paths of travel in and throughout the  
28 merchandise aisles, and (3) an accessible transaction counter.

## B. Damages

Plaintiff seeks damages under the Unruh Act. “A violation of the right of any individual under the [ADA] shall also constitute a violation of this section.” Cal. Civil Code § 51(f). The Unruh Act allows for monetary damages, stating that: “Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 . . . is liable for each and every offense for the actual damages . . . up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000) and any attorney’s fees that may be determined by the court . . . .” Cal. Civil Code § 52(a). A victim of discrimination, however, “need not prove she suffered actual damages to recover the independent statutory damages of \$4,000.” *Molski*, 481 F.3d at 731. Furthermore, “no showing of intentional discrimination is required where the Unruh Act violation is premised on an ADA violation” to award damages under the Unruh Act. *Lentini v. Cal. Ctr. for the Arts, Escondido*, 370 F.3d 837, 847 (9th Cir. 2004).

As discussed above, Plaintiff has established a violation of the ADA for his 2017 visits. Because Plaintiff has established a violation of the ADA, he has necessarily established a violation of the Unruh Act, and is therefore entitled to statutory damages of \$4,000 for each visit, as well as attorney's fees. Plaintiff seeks only one statutory penalty of \$4,000, which the Court grants.

### **C. Attorney's Fees and Costs**

To determine the appropriate lodestar amount, the reasonableness of the hourly billing rate must be assessed. *Credit Managers Ass'n v. Kennesaw Life & Accident Ins. Co.*, 25 F.3d 743, 750 (9th Cir. 1994). In doing so, the court must look to the prevailing market rates in the relevant community for similar work by attorneys of comparable skill, experience, and reputation. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Generally, the relevant community is the forum where the district court sits. *Id.* “[T]he burden is on the fee applicant to produce satisfactory evidence--in addition to the attorneys' own affidavits--that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Id.* at 980 (internal quotation omitted).

Plaintiff seeks attorney's fees of \$5,988. In support, Plaintiff provides a declaration by

1 Dennis Price. (Price Decl., Dkt. No. 55-3.) Attorney Price's declaration includes summaries of  
2 the professional experience and qualifications of Attorneys Mark Potter, Russell Handy, Phyl  
3 Grace, Isabel Masanque, and Attorney Price. (Price Decl. ¶¶ 9-13.) The declaration also includes  
4 a billing statement describing the work performed by, and the hourly rates of, the attorneys listed  
5 above. (Price Decl. at 10.)

6 The Court finds that the billing rates sought are generally unreasonable. Attorneys Potter,  
7 Handy, and Grace seek hourly rates of \$650, while Attorneys Masanque and Price seek hourly  
8 rates of \$410. (Price Decl. at 10.) Plaintiff contends that in *Love v. Rivendell II, Ltd.*, Case No.  
9 18-cv-3907-JST, Judge Laporte recommended the award of these rates on default judgment.  
10 (Memorandum of Points and Authorities at 13, Dkt. No. 55-1; Dkt. No. 66 at 1-2.) While true, the  
11 Court notes that in March 2019, Plaintiff's counsel requested significantly lower rates in *Johnson*  
12 *v. RK Investment Properties, Inc.* Case No. 18-cv-1132-YGR (KAW). There, Plaintiff sought  
13 hourly rates of \$425 for Attorneys Potter, Handy, and Grace, and \$350 for Attorneys Masanque  
14 and Price, for work performed between January 26, 2018 and November 16, 2018. (See *Johnson*,  
15 Dkt. No. 12-5 ("Johnson Price Decl.") at 8. Here, the majority of the work was performed  
16 between January 1, 2018 and March 12, 2018. (Price Decl. at 10.) Plaintiff provides no  
17 explanation for why the Court should award rates that are \$60 to \$225 greater than rates awarded  
18 for near identical work performed during the same time period, other than that they did not seek  
19 the higher rates before. (Dkt. No. 66 at 4.)

20 Moreover, in *Johnson v. AutoZone, Inc.*, Judge Hamilton recently rejected the higher rates  
21 now sought by Plaintiff's counsel, and awarded hourly rates of \$425 for Attorneys Potter, Handy,  
22 and Grace, and \$300 for Attorneys Masanque and Price. Case No. 17-cv-2941-PJH, 2019 WL  
23 2288111, at \*6-7 (N.D. Cal. May 28, 2019). While Judge Hamilton acknowledged the *Love v.*  
24 *Rivendell II* default judgment order, she explained that "that lone order granting an unopposed  
25 motion does not accurately reflect the prevailing rate in the community for work similar to this  
26 case." *Id.* at \*6 n.4. Instead, "that order cited cases that concerned work substantially different  
27 from the work performed in this action," including complex class actions. *Id.* For example, *Elder*  
28 *v. National Conference of Bar Examiners* was a case that set new precedent and caused the

1 defendant to change a policy impacting hundreds of individuals each year, while *Civil Rights*  
2 *Education and Enforcement Center v. Ashford Hospital Trust, Inc.* was a complicated class action  
3 brought against 54 hotels. *Id.* Both these cases are relied upon by Plaintiff to justify the higher  
4 rates. Significantly, the work in this case was not complicated; Plaintiff's counsel has performed  
5 the same work in numerous cases, and the only motion practice here was an unopposed motion for  
6 default judgment.

7 Accordingly, the Court awards rates of \$425 for Attorneys Potter, Handy, and Grace, and  
8 \$350 for Attorneys Masanque and Price, consistent with the rates previously awarded in *RK*  
9 *Investment Properties, Inc.* and other recent ADA cases. *See AutoZone, Inc.*, 2019 WL 2288111,  
10 at \*6-7; *Arroyo v. Aldbashi*, Case No. 16-cv-6181-JCS, 2018 WL 4961637, at \*5 (N.D. Cal. Oct.  
11 15, 2018).

<b>Attorney</b>	<b>Rate</b>	<b>Hours</b>	<b>Total:</b>
M. Potter	\$425	3.0	\$1,275.00
R. Handy	\$425	2.6	\$1,105.00
I. Masanque	\$350	1.1	\$385.00
P. Grace	\$425	0.9	\$382.50
D. Price	\$350	3.2	\$1,120.00
			<b>\$4,267.50</b>

16 The Court finds that Plaintiff has submitted sufficient evidence in support of his request for  
17 costs, including \$200 for an investigator, \$400 in filing fees, and \$120 in service costs. The Court  
18 therefore awards \$720 in costs, for a total of \$4,987.50.

## 19 V. CONCLUSION

20 For the reasons set forth above, and for good cause shown, the Court GRANTS IN PART  
21 AND DENIES IN PART Plaintiff's motion for default judgment. Judgment shall be entered in the  
22 amount of \$8,987.50 (\$4,000 in statutory damages, \$4,267.50 in attorney's fees and \$720 in  
23 costs). The Court also grants an injunction requiring Defendant to remedy the ADA violations as  
24 to the parking spaces, aisle width, and counter height, as required by the ADA.

25 IT IS SO ORDERED.

26 Dated: July 9, 2019

27   
28 KANDIS A. WESTMORE  
United States Magistrate Judge